

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline G (Alcohol Consumption) states: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

Guideline J (Criminal Conduct) provides that "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The conditions that could raise a security concern and may be disqualifying include a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; an individual is currently on parole or probation; an individual's parole or probation was violated or revoked; an individual's failure to complete a court-mandated rehabilitation program; and discharge or dismissal from the Armed Forces for reasons less than "Honorable." Adjudicative Guidelines at ¶ 31.

The LSO alleges that, in April 2019, the Individual was diagnosed by a DOE Psychiatrist with Alcohol Use Disorder-Moderate, in early remission. It further alleges that the Individual was subject to the following arrests for various offenses:

1. December 2015, Driving Under the Influence (DUI) of Alcohol and Implied Consent.
2. June 1986, February 2004 and January 2007, Public Intoxication.
3. August 2002, DUI by Allowance.
4. September 1985, March 1996 and May 2000, DUI.
5. January 1990, Leaving the Scene of an Accident and Public Intoxication.
6. April 1985, [Possession of] Alcohol in a State Park, Contributing to the Delinquency of a Minor, Concealing an Illegal Weapon, and Public Intoxication.
7. December 2016, Driving on a Suspended License.
8. September 1999, Possession of Marijuana, Expired Registration, and Possession of Drug Paraphernalia.

Accordingly, given the Individual's history of alcohol-related arrests, the LSO's security concerns under Guideline G and J are justified.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

At the hearing, the Individual presented the testimony of his friend, his co-worker, and his wife.

The Individual's friend testified that he had known the Individual for nearly 40 years. Tr. at 11. They communicate monthly. *Id.* They see each other when he is passing through the Individual's

city for travel. *Id.* He did not know about the Individual's alcohol consumption habits. The Individual's friend believed that the Individual was honest. *Id.* at 11–12. He testified that the Individual was not drinking as of May 2019 when he was invited to an event. *Id.* at 14. He further testified that the Individual had joined Alcoholics Anonymous (AA) and had discussed it briefly with him in the weeks prior to the hearing. *Id.* at 14–15.

The co-worker testified that the Individual had told him that he was having trouble with his security clearance process because he has a common name and other people's crimes were showing up on his record. *Id.* at 18. He had daily contact with the Individual, but did not see the Individual socially. *Id.* at 19. The co-worker had no knowledge of the Individual's alcohol use. *Id.* at 19–20. Nonetheless, he believed the Individual to be honest and trustworthy. *Id.* at 20.

The Individual's wife testified that the Individual had told her that the security concerns dealt with his alcohol use. *Tr.* at 25. They had been together for almost 30 years. *Id.* at 25. She did not have significant concerns about the Individual's alcohol consumption because she felt he controlled himself when drinking. *Id.* at 26. She testified that because his DUIs were not caused by serious crashes, but rather by minor offenses, she considered them to be less serious than other types of DUIs. *Id.* She also testified that prior to May 2019, the Individual would consume up to four beers two to three times during the week at home and would also consume six to eight beers socially on the weekends. *Id.* at 28. The Individual's wife testified that the Individual last consumed alcohol in May 2019 and started AA three times per week about a month later. *Id.* at 29–30. She does not drink alcohol around the Individual and they do not have alcohol in their home. *Id.* at 33–34. She does not believe the Individual has ever hidden his alcohol use from her. *Id.* at 34. Though she had not been concerned about the Individual's drinking over the years, she expressed happiness that the Individual no longer consumed alcohol. *Id.* at 34–35. The Individual's wife also testified that the Individual did attempt to quit drinking in April 2019, but after his evaluation with the Psychiatrist, he was so stressed out that he began drinking again. *Id.* at 41–42. She testified that she believed he quit for good in May after receiving the Psychiatrist's report. *Id.* at 42. She also believed that the Individual intended to remain abstinent permanently. *Id.*

The Individual testified that his license has never been suspended and submitted evidence showing that the December 2016 charge was against a different individual with a similar name. *Tr.* at 51, Ex. A. He did not contest any other security concern. *Tr.* at 52. The Individual testified that he had never been convicted of a DUI, though he admits to driving under the influence. *Id.* at 51–52, 55–57, 93–94.

The Individual testified that before his evaluation with the Psychiatrist, he would drink about three to four beers per night most nights of the week. *Tr.* at 58. He might drink a six pack during a football game. *Id.* The Individual testified that he stopped drinking on April 15, 2019, not in May 2019. *Id.* at 60. He testified that, in April 2019, the Psychiatrist advised him to seek support beyond his family and to start attending Alcoholics Anonymous. *Id.* at 65. He drank alcohol again on July 4, 2019, and again shortly afterward on a trip to Las Vegas. *Id.* at 60–61. At the time, he was frustrated that the Administrative Review process was taking so long and, believing it could be months before he heard anything about his security clearance, he decided to consume alcohol just on his vacation. *Id.* at 83. He continued to consume alcohol about once per week until October, though he did not believe he had consumed alcohol during August. *Id.* at 60–62. The Individual testified that he began attending AA in early October and had his last drink about two days prior to that. *Id.* at 62, 64. He

enjoyed going to AA and found it very helpful. *Id.* at 65. He testified that he did not go sooner because he thought he could quit drinking on his own. *Id.* at 65. Even though he was still consuming alcohol about once per week, he did not seek out any treatment to assist in abstaining. *Id.* at 66. As of his hearing date, the Individual did not have an AA sponsor, nor had he started working the 12-Steps of the AA program. *Id.* at 67–69. He testified that he was learning about the steps, but was unable to identify the first step. *Id.* at 69–70. The Individual asserted that the 12-steps are not discussed at his AA meetings. *Id.* at 70–71.

The Individual acknowledged that he had a problem with alcohol. Tr. at 71. He could not identify any triggers that caused him to consume alcohol between May and October, stating that it was “just habit.” *Id.* He had learned that he should call a sponsor or another support person when he was feeling like drinking. *Id.* at 71. However, he had no sponsor and had not used the list of support names and numbers that he received at AA. *Id.* at 71. He testified that he believes that he needs more of a support group for his sobriety. *Id.* at 86. The Individual did not have a plan to go through the holidays without drinking. *Id.* at 79. He testified that, even though he had consumed alcohol from July to October, his once weekly drinking was much better than his daily drinking that he had been doing before April. *Id.* at 79–80.

The Psychiatrist recommended absolute sobriety to the Individual at the April evaluation. Tr. at 99. He also told the Individual at that time that he should not attempt to make this change on his own and that his spouse’s support was not enough accountability. *Id.* at 100. Specifically, the Psychiatrist was worried about the wife’s lack of concern over the Individual’s drinking. *Id.* at 106. He testified that he was not surprised to hear that the Individual relapsed after trying to abstain on his own, stating that it is a classic pattern. *Id.* at 102. The Psychiatrist testified that research indicates that drinking less is not an effective treatment for Alcohol Use Disorders because consumption tends to increase over time back to unhealthy levels. *Id.* at 102–03. He testified that abstinence is the only sure treatment. *Id.* at 103.

The Psychiatrist believed that the Individual’s judgment regarding alcohol was no longer clear because the Individual had escaped punishment for many alcohol-related crimes over the decades and likely could not grasp the seriousness of his current situation. Tr. at 104. He did not hear the Individual testify about wanting sobriety and clarity in his life. *Id.* at 107. He was concerned about the Individual’s sobriety such that he would not prescribe certain medications to the Individual that could result in serious complications if combined with alcohol. *Id.* at 107–08.

The Psychiatrist testified that the Individual is not rehabilitated or reformed. Tr. at 108–09. He gave the Individual a fair to guarded prognosis, indicating that he had a high risk of relapse. *Id.* at 109, 112. One factor in his prognosis is the ease with which the Individual relapsed. *Id.* That relapse also caused the Psychiatrist to testify that a more structured program, such as an intensive outpatient program, would be advisable at this point in the Individual’s recovery. *Id.* at 110. For rehabilitation, the Psychiatrist would recommend 12 months of abstinence and treatment for the Individual. *Id.* at 109–11, 114.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours

and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny a security clearance if I am not convinced that the LSO's security concerns have been mitigated such that granting the Individual's clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

Guideline J provides that security concerns arising from criminal conduct can be mitigated when so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; the individual was pressured or coerced into committing the act and those pressures are not prescribed, the pressures are no longer a part of the individual's life, and the abuse has since ended; there is no reliable evidence to support that the individual committed the offense; and there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement. Adjudicative Guidelines at ¶ 32.

The Individual's alcohol use is recent and most recently occurred as relapses after two periods of abstinence, each of which lasted a few weeks. Though he acknowledges his alcohol issues, the Individual has not established a pattern of abstinence because he has not abstained longer than about three months at a time since being told that he should stop drinking completely over eight months ago. Furthermore, the Individual has not taken several important steps toward recovery, such as getting an AA sponsor, identifying relapse triggers, or making a plan to get through special occasions during which he used to drink. The Psychiatrist did not believe that the Individual was rehabilitated or reformed, and gave him only a fair to guarded prognosis. Indeed, the Individual has not completed a treatment program and has not started working on the 12-Steps of AA. At this time, the Individual is still early in his recovery and has not begun working on the underlying causes

and triggers of his alcohol use disorder. Accordingly, I cannot find that he has mitigated the Guideline G security concerns.

The Individual's criminal conduct (the Guideline J concerns) is inextricably intertwined with his alcohol use. Until the concerns surrounding his alcohol use are resolved, I cannot find that his criminal conduct is not unlikely to recur. His alcohol use casts doubt on his judgment, trustworthiness, and reliability because, until he has established a pattern of abstinence, the possibility remains that he will break the law while under the influence of alcohol. Accordingly, I cannot find that he has mitigated the Guideline J security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines G and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals